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No. 81-1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ARIZONA ELECTRIC POWER COOPERATIVE, INC.,
Petitioner,

v.

MID-LOUISIANA GAS COMPANY, *et al.*,
Respondents.

RESPONSE OF THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA TO THE MOTION OF ARIZONA ELECTRIC POWER COOPERATIVE, INC., FOR CONTEMPORANEOUS CONSIDERATION AND DISPOSITION OF PETITIONS FOR CERTIORARI

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Now comes the Public Service Commission of West Virginia (West Virginia) by counsel, and, pursuant to Rule 42.4 of the Rules of the Supreme Court of the United States, interposes its response to the Motion of Arizona Electric Power Cooperative, Inc. (AEPCO), for Contemporaneous Consideration and Disposition of Petitions for Certiorari. AEPCO's Motion was filed with the Court on April 22, 1982 and received by counsel for West Virginia on April 26, 1982. West Virginia is not a party in this proceeding and was not a party to the proceeding in the United States Court of Appeals for the 5th Circuit, in which AEPCO seeks this Court's review. West Virginia is, however, the respondent in the case of *Pennzoil Company* v. *Public Service Commission of West Virginia*, (No. 81-1672, filed March

10, 1982). It is this case which AEPCO seeks to have considered contemporaneously with its petition in No. 81-1958.

In response to AEPCO's Motion, West Virginia would like the Court to consider the following factors in its deliberations on the motion:

1. Contrary to the representations of AEPCO, the West Virginia Supreme Court of Appeals did not adopt as the basis for its decision the order of the Federal Energy Regulatory Commission (FERC) which was reversed and vacated by the 5th Circuit in *Mid-Louisiana*. *A review of the one page order of the West Virginia Supreme Court of Appeals*[1] reveals that the Court was silent on the bases for denial of Pennzoil's appeal. As West Virginia has argued in its Brief in Opposition to Pennzoil's Petition for a Writ of Certiorari, there were a number of other bases upon which Court could have relied.

2. As West Virginia has indicated in its Brief in Opposition in the *Pennzoil* case,[2] it intends to file an *amicus curiae* Brief in the *Mid-Louisiana* case in support of the petitions for writ of certiorari. However, the reason for supporting review of the *Mid-Louisiana* case is not based upon the identity of issue in the *Pennzoil* and *Mid-Louisiana* cases, but rather upon the substantial impact the *Mid-Louisiana* decision will have upon West Virginia utilities and their customers as a result of purchases of gas from interstate pipeline companies which have their own production. West Virginia views the *Pennzoil* case as involving separate legal grounds which require an affirmance, and support denial of certiorari regardless of the outcome of the petitions to review the Fifth Circuit's *Mid-Louisiana* opinion. Specifically, a determination that an intracorporate transfer of gas constituted a "first sale" of

[1]See Pet. App. A in case No. 81-1672.

[2]See n. 5 on page 10 of West Virginia's Brief in Opposition in Case No. 81-1672.

natural gas within the meaning of Section 2(21) of the Natural Gas Policy Act, 15 U.S.C. §§3301 *et seq.*, as held in *Mid-Louisiana*, would not be determinative of the additional issues with respect to the West Virginia Commission's regulation of the rates charged by intrastate utilities to retail consumers in the state which were before the Supreme Court of Appeals of the State of West Virginia and, as set forth in our Brief in Opposition to Certiorari in No. 81-1672, present no questions warranting review by this Court.

Finally, West Virginia wishes to make it clear to the Court that it has no objection to the Court's consideration of the *Pennzoil* petition at any time, including at the same time as the Court considers the petitions in *Mid-Louisiana*. Further, West Virginia supports AEPCO's request for summary reversal in *Mid-Louisiana*. However, there are sufficient independent state grounds and other bases under the NGPA to support the West Virginia Supreme Court of Appeal's decision in *Pennzoil* which justify separate consideration of the two cases, and denial of the petition for certiorari in *Pennzoil* regardless of the court's action on the petitions from the *Mid-Louisiana* opinion.

Respectfully submitted,

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